



AMERICAN COUNCIL OF THE BLIND

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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<i>In the Matter of</i>)	
Implementation of Section 255 of the)	WT Docket No.
Telecommunications Act of 1996)	96-198
)	
Access to Telecommunications Services,)	
Telecommunications Equipment, and)	
Customer Premises Equipment)	
by Persons with Disabilities)	

NOTICE OF INQUIRY

Comments of the
**AMERICAN COUNCIL OF THE BLIND ON THE NOTICE OF
INQUIRY REGARDING IMPLEMENTATION OF SECTION 255
OF THE TELECOMMUNICATIONS ACT OF 1996**

To: The Federal Communications Commission

Date: November 27, 1996

The American Council of the Blind (ACB) is pleased to respond to your request for comments in the Notice of Inquiry, FCC 96-198, in the above-captioned proceeding released September 19, 1996, and to reply to other comments submitted in response thereto.

The American Council of the Blind is the leading national organization of blind men and women in the United States, with seventy affiliate organizations and members in every

state. ACB strives to increase the independence, security, equality of opportunity, and quality of life for all blind and visually impaired people.

ACB worked actively with Congress, other disability organizations and industry during the legislative process to ensure that the Telecommunications Act of 1996 contained disability access provisions that would ensure that Americans with disabilities will enjoy full and equal access to the benefits of the telecommunications services and equipment which play such a prominent role in our national life. ACB is particularly interested in assisting the Commission and the Architectural and Transportation Barriers Compliance Board (Access Board) to develop standards and regulations that will aid telecommunications service providers and equipment manufacturers in designing services and products that are accessible to and usable by their blind and visually impaired customers without imposing unnecessary burdens.

Paragraph 7

The Commission seeks comment regarding approaches to enforcement of Section 255 and suggests various options including the promulgation of rules, under Section 4(I) of the Communications Act.

ACB urges the FCC to promulgate rules, pursuant to existing provisions in the Communications Act, for enforcement of Sec. 255. Rulemaking authority is provided in Section 4(I) of the Telecommunications Act which states in part that the Commission may ". . . make such rules and regulations, . . . not inconsistent with this Act, as may be necessary in the execution of its functions." Furthermore, Section 201 of the Communications Act also authorizes the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act" with respect to common carriers. An enforcement approach should be selected which will:

- (a) result in access to telecommunications products and services sooner rather than later,
- (b) solicit input from and encourage collaboration between industry representatives and disabled consumer representatives,
- (c) clearly establish access requirements and any exceptions to those requirements so that industry has guidelines and consumers have reasonable and realistic expectations.

The Commission should promulgate comprehensive, flexible, and performance-oriented rules in order to implement Section 255. Federal regulations are necessary to ensure that all covered manufacturers and service providers compete on a level playing field and that accessibility for individuals with disabilities is consistently addressed across the industry. Clear rules setting forth the expectations of the Commission will ensure

that both customers with disabilities and the industry understand how these requirements will be implemented and enforced.

Section 255(b) provides that “[a] manufacturer of telecommunications equipment or customer premises equipment shall ensure that equipment is *designed, developed, and fabricated* to be accessible to and usable by persons with disabilities, if readily achievable.” (emphasis added) Case-by-case determinations would only address access after the fact, i.e., when telecommunications equipment manufacturers had completed the design, development and fabrication stages. A complaint resolution approach without regulations to provide guidance during the critical design, development and fabrication stages would not lead to accessible products and would, instead, lead to costly and cumbersome complaint proceedings.

People with disabilities cannot afford to wait the years it would take for access to be defined under a case-by-case approach which would only define access after the fact. The telecommunications industry cannot afford to develop and produce products and services only to learn, after bringing them to market, that products they thought to be accessible were, in fact, not usable by individuals with disabilities. The FCC would doubtless not have the resources to manage the volume such a complaint system would produce. Accessibility would not be enhanced.

Guidelines and policy statements may be useful to supplement regulations, but would not, standing alone, be viewed as mandatory by all parties and would, therefore, have the inequitable effect of placing providers investing in accessibility at a competitive disadvantage as compared to providers who failed to undertake to make their products and services accessible. An enforcement approach should be implemented which will result in collaboration on the part of people with disabilities and the telecommunications industry, the most cost-effective access solutions, and which will minimize the need for federal government intervention except as facilitator. In the long run, an open, thorough, and informative rulemaking process will result in more accessible telecommunications products and services at less cost to all parties involved.

The Telecommunications Access Advisory Committee, which is comprised of industry and disability representatives working together, is well under way to including extensive performance-based and process-oriented guidelines in its recommendations to the Access Board. These recommendations will be used by the Access Board in constructing proposed accessibility guidelines for telecommunications equipment and customer premises equipment. Service providers should be involved in a similar process so that they too can benefit from the collaborative input of others in the industry as well as experts in the needs of people with disabilities.

Many commenters from the telecommunications industry referred to examples of improved accessibility for people with disabilities and urged that voluntary efforts on the part of industry obviate the need for regulations. The consistent and unanimous call for

regulations by the disability community is evidence that voluntary efforts have not been adequate to achieve satisfactory results. As has been pointed out by the National Association of the Deaf, "[T]he very enactment of Section 255 itself was a response to the historic failure of industry to consider the needs of individuals with disabilities in the design of telecommunications products and services." At the same time that Congress was substantially deregulating the telecommunications industry with the Telecommunications Act of 1996, Congress elected to impose new regulations where disability access is concerned because of the failure of the marketplace to ensure disability access.

Most of the telecommunications products on the market today contain print labels, touch screens, or visual displays with no corresponding tactile or audible information so that they are not usable by people with vision impairments. Graphic-based communications systems, on-line information services, and even telephone answering devices are imposing communications and information barriers for blind people more than ever before, restricting employment options, decreasing personal independence, and interfering with trade and commerce. Simple information such as residential and business telephone directories, item numbers and order telephone numbers for home shopping are still displayed in visual, print displays only, precluding blind people from accessing them. Vital public information such as storm warnings and community service information are still displayed across the bottom of the television screen with no corresponding audible announcements. These are just a few examples of inaccessible products and services. Many of these are inexpensive, easy-to-solve barriers that industry has refused to rectify voluntarily. Clear, uniformly applied regulations are the only means by which the telecommunications industry will make its services and products accessible to blind people. The fact that some providers have voluntarily and successfully undertaken to include disability access features in their products and services is evidence of just how readily achievable disability access is--not evidence that those who have not made accessibility efforts will voluntarily undertake to do so at some time in the future.

Paragraph 8

The Commission seeks comment on whether the term "provider of telecommunications services" requires further clarification or definition in the context of Sec. 255.

ACB agrees with the Consortium of Citizens with Disabilities (CCD) telecommunications Task Force that the definition of providers of telecommunications services should be construed in the broadest possible terms. The industry and its current regulatory infrastructure are changing rapidly. The convergence of telecommunications technologies and services is rapidly erasing the clear lines of distinction between one type of provider and another. As Commissioner Ness put it, "The new law deliberately blurs lines between formerly discrete sectors of the telecommunications industry. Bell Atlantic may become your long-distance company, or your video service provider. MCI or AT&T may become your local telephone company, or your source for wireless

services. Cox or Comcast may offer you broadband Internet access, or wireless local loop." (Remarks of Commissioner Susan Ness, the Public Policy Forum Series, The Wharton School of the University of Pennsylvania, Philadelphia, Pennsylvania, February 22, 1996)

Paragraph 11

In paragraph 11, comment is sought regarding the application of Section 255(b) in light of different accommodations that may be necessary for specific disabilities and with differing national equipment accessibility standards. The Notice asks if the Commission should give weight to the different standards confronted by a manufacturer with markets in other nations when considering what accessibility measures are readily achievable.

Congress did not establish exceptions to Section 255 of the Telecommunications Act for manufacturers that enter markets with varying equipment standards. There is no evidence that Congress intended that Americans with disabilities should simply have limited access to American telecommunications services and products in cases where other countries have conflicting or lower standards for access. Undoubtedly, Congress did not intend to place American telecommunications providers at a competitive disadvantage by exempting non-American providers from access standards imposed on American providers. There is no evidence in the statute or its legislative history that Congress contemplated drawing any distinctions among manufacturers.

Paragraph 12

Paragraph 12 of the Notice notes that because telecommunications equipment and customer premises equipment often consist of components manufactured by several different and possibly unrelated companies, the Commission seeks input in order to determine how to apportion responsibility among manufacturers. The Notice also asks for comment regarding the obligations of secondary manufacturers or resellers in situations in which manufacturers license their equipment design to other manufacturers for production.

Congress took an all-inclusive approach to disability access requirements when it provided in Section 255(b) that "[a] manufacturer of telecommunications equipment or customer premises equipment shall ensure that equipment is *designed, developed, and fabricated* to be accessible to and usable by persons with disabilities, if readily achievable." (emphasis added) All entities involved in producing a telecommunications product or service should be liable for failure to make those products and services accessible and should have the right to contract with one another to indemnify one another for that liability. The market should be free to apportion responsibility for access among themselves through contractual arrangements. This would promote efficiency by allowing the parties with the most knowledge about the technical and design capabilities of the marketplace to decide how access can be achieved in the most

cost-effective manner. Ultimately, however, the Commission should be able to enforce the disability access requirements without involving itself in those contractual arrangements by having the ability to impose requirements on any parties involved in the production of a service or product and leaving it to those parties to seek remedies against one another where their contractual arrangements are not upheld.

We acknowledge that it will not always be readily achievable to make all services or equipment accessible to and usable by all individuals with disabilities. The operative question is not "who" is responsible for doing so; the appropriate inquiry for determining compliance is whether legitimate efforts were made at each stage of the development process to achieve disability access.

Paragraphs 13 and 14

Paragraphs 13 and 14 seek comment on the definition of "disability" as it relates to telecommunications.

ACB urges the Commission to adhere to the definition of "disability" as set forth in the Americans with Disabilities Act. In adopting the ADA definition into the Telecommunications Act, Congress intended to address all forms of discrimination by telecommunications service providers and equipment manufacturers. First, it is discriminatory to design, develop, and fabricate equipment that is not accessible to or usable by individuals with disabilities if doing otherwise is readily achievable. Second, it is discriminatory to deny services or products to an individual because that individual has a record of having a disability or is regarded as having a disability. Customers with disabilities should have the same degree of choice of services and products, privacy and confidentiality, and the same level of service as individuals without disabilities. Third, it is also discriminatory to deny or restrict the availability of services or products to individuals who are associated with someone with a disability.

Paragraph 16

In Paragraph 16, the Commission seeks comment regarding the factors to be considered in applying the ADA definition of "readily achievable" to providers of telecommunications equipment and services.

ACB urges the Commission to adhere to the definition and factors of the term "readily achievable" as set forth in the Americans with Disabilities Act. As the Commission notes, the ADA defines "readily achievable" as: "[E]asily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include--

- (a) the nature and cost of the action needed under [the ADA];

- (b) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;
- (c) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (d) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity."

Several commenters argued for strict limits on the application of the financial resources of a parent corporation to the work of a subsidiary. Some even argued that company product teams with financial responsibility for a product should be the only unit for purposes of the readily achievable exemptions. Clearly, such a micro-application of the readily achievable exemption was not intended by Congress when it adopted the ADA readily achievable definition. Of course, telecommunications companies have complete control over the allocation of costs within and across their own product teams, and to suggest that the readily achievable exception might be appropriately applied in a context so easily shielded by corporate cost accounting strategies is further evidence that there are at least some in the industry who will spend exponentially more dollars on avoidance than compliance unless the Commission establishes unambiguous, uniform, and enforceable regulations that foster compliance rather than avoidance.

Paragraph 17

Paragraph 17 seeks comment on the "costs: financial resources" consistent with the ADA definition of "readily achievable."

ACB agrees with the CCD Telecommunications Task Force that the benefits of accessibility features in telecommunications products and services are as important as are the costs to manufacturers and providers to be in compliance with the universal design principles of this mandate. Any discussion about cost estimates should address a number of factors such as the benefits of assistive devices, accessibility features and other accommodations to individuals with disabilities in the aggregate. Factors to include would be the determination of direct and productivity-related benefits, the cost savings or "avoided costs" or "opportunity costs" for individuals with disabilities, in addition to benefits to society and other measures.

Because Section 255(b) of the Telecommunications Act makes it clear that Congress intends that the telecommunications industry will ensure accessibility during the *design*,

development, and fabrication stages of product development, costs to the industry for addressing accessibility after the fact should not be considered in determining cost. It is well established that access features are generally more expensive when retrofitting equipment as opposed to building accessibility into the original design. Companies that have the opportunity to consider access during design, development, and fabrication and fail to do so should not be permitted to use the costs of retrofitting in applying the readily achievable standard.

Paragraph 21

In Paragraph 21, the Commission seeks comment regarding the terms "accessible to" and "usable by."

"Accessible to" generally means that an individual with a disability is able to approach, reach, and be able to interact with an item or individual without being prevented from doing so by barriers. "Usable" means that an individual with a disability can activate, operate, and complete all transactions independently, to the same extent as individuals without disabilities, including having access to the same information throughout the process, such as being informed of all input verifications, transaction prompts, and output.

Paragraph 22

Paragraph 22 seeks comment regarding whether access for particular disabilities may be satisfied through access to only a portion of product or service offerings.

The Telecommunications Act disability access provisions contain no disability-based distinctions. A manufacturer or provider must take action to ensure access throughout the range of covered services and equipment for the broadest possible range of disabilities, if readily achievable. Otherwise, individuals with certain disabilities may never gain access to the wide range of telecommunications technology which will be so integral to modern life.

Paragraph 23

Paragraph 23 seeks comment regarding the extent to which accessible telecommunications services, telecommunications equipment, and CPE are currently available.

Most telecommunications services and products are not fully accessible to blind people. The few examples that are, therefore, stand out and are easier to list than those that are not. In short, information that is displayed in visual formats only is inaccessible to blind people. Pacific Bell has designed a Caller ID box that provides audible as well as visual

information. Telephone key pad transactions such as paying bills, verifying bank transactions, and so forth are usable by persons with vision impairments. The same types of transactions offered via graphic-based software or mouse-driven menu screens are not usable by blind individuals. Telephone answering systems that employ graphic-based menus and mouse-driven menus with no corresponding text-based options are unusable by blind people. Telephones with visual read-outs and lights that have no corresponding audible information are inaccessible to blind people. The same is true for fax machines, answering machines, and information kiosks, just to name a few. Touch screens, with no corresponding tactily discernable keys or audible verification mechanisms, are not usable by blind people. Communications software that is graphic-based, but which has no corresponding text-based means of access, is not usable by blind people who rely on screen reader software. Television and cable set top box systems that are operated with "point and click," remote control, and on-screen interactive menus that provide the user with only visual feedback are inaccessible to blind people. For example, blind people cannot independently use home video services such as Pay-Per-View. Home shopping services that display item numbers and telephone numbers visually with no corresponding audible information are inaccessible to blind people. News flashes, emergency warnings, public service announcements, and advertisements are often displayed visually on the television screen with no corresponding audible announcements and are, therefore, inaccessible to blind people. Print Yellow Pages and residential telephone books, with no corresponding directory assistance, are inaccessible to blind people. Magnetic card readers and smart cards with no corresponding audible output are inaccessible to blind people. Furthermore, in general, the operating instructions for telecommunications devices and services are available only in print, making them inaccessible to blind people.

Paragraphs 24 and 25

Paragraphs 24 and 25 seek comment on compatibility with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access.

The list of specific adaptive devices used by blind people is increasing rapidly, and a list of such would be outdated as soon as printed. Furthermore, even among the community of blind and visually impaired people, the types of assistive technology used varies depending on the degree of vision loss, recency of blindness, and consumer preference of the individual. Some visually impaired individuals rely primarily on braille for reading. For people who are deaf/blind, braille is often the only means of acquiring information. Most individuals with visual impairments, however, are not proficient braille users and rely on audible information, either in the form of human speech or digital speech output. Still others with vision impairments prefer large bold print and use a variety of magnification devices. ACB agrees with the American Foundation for the Blind comments on this section and urges regulations that result in manufacturers providing a universal port which would allow data to be transferred to a separate, accessible device,

but only where it is not readily achievable to integrate full accessibility into the service or product itself.


For far too long, access to information for individuals with disabilities has depended largely upon the availability of expensive, adaptive equipment. Individuals with visual impairments often use speech synthesis hardware and software interfaces necessary to operate visual display computers. Most adaptive devices or software have been developed by small entrepreneurs working feverishly to catch up with developments in the technology. There is often significant lag time between when technology is available to the public and when such adaptive devices make the technology available to persons with disabilities. This "separate and unequal" system of access to important technology and services for people with disabilities is inefficient and costly. It is much more cost-effective to design access at the inception of a product or service than to add access on later through retrofits and redesigns.

Paragraph 35

Paragraph 35 of the Notice seeks comments on FCC working in conjunction with the Access Board.

ACB recommends that the Commission follow the precedent of the Department of Justice and Department of Transportation and adopt, at a minimum, the guidelines established by the Access Board and that a mechanism be established for regular, periodic review and revision of those guidelines.

Respectfully submitted,


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